the law, had used the old tin horns instead; and that on the night of collision he did not at first use it, but brought it on deck out of his cabin at two o'clock in the morning, only an hour before collision.

Decree for the libelant for one-half the damages.

THE WHITEASH and THE WINNIE.

O'BRIEN v. THE WHITEASH and THE WINNIE.

(District Court, S. D. New York. November 26, 1894.)

COLLISION—OVERTAKING VESSEL — MUST CONFORM TO LEADING VESSEL—UNLICENSED DECKHAND IN CHARGE.

The tug Whiteash was rapidly overtaking the tug Winnie in going up the East River a little above the bridge, both having tows alongside. The Winnie changed her course to port, in order to pass to the left a large steamer coming down, under proper signals. The tow of the Whiteash, while the latter was overtaking and passing the Winnie to the left, came in collision with th latter's tow: *Held*, that it was not a fault in the Winnie to change her course to the left under appropriate signals, in order to meet and pass the steamer coming down, and that the Whiteash, being then behind and duly warned by the Winnie's signals of her intended movements, was bound to conform her own movements to those of the Winnie, and was therefore wholly in fault for the collision; that probably the collision would not have occurred had not the navigation been in charge of an unlicensed deckhand, while the master was at dinner.

This was a libel by Patrick O'Brien against the steam tugs Whiteash and Winnie for damages by collision.

Stewart & Macklin, for libelant.

Butler, Stillman & Hubbard and George Cromwell, for the Whiteash.

Robinson, Biddle & Ward, for the Winnie.

BROWN, District Judge. On the 15th of May, 1894, at about 11 o'clock in the forenoon, the libelant's canal boat J. C. De Freest, in tow of the tug Winnie, and on her port side, in going up the East river, when a little above the bridge, came in collision with a railroad float on the starboard side of the steamtug Whiteash, which was also bound up the East river. The De Freest sustained some damages, to recover which the above libel was filed against the Whiteash. The Winnie was brought in as a party defendant on the petition of the owners of the Whiteash, under the fifty-ninth rule of the supreme court in admiralty.

The evidence leaves no doubt that the Whiteash was the overtaking tug, and that she was going up the East river from two to three times as fast as the Winnie with her tow. There is considerable difference in the testimony in regard to the position of the Winnie, whether nearly in mid river, or considerably on the Brooklyn side; and also as to the distance between the lines of their two courses a few minutes before collision. The large steamer Whitney was coming down the East river, and after rounding Corlear's Hook and getting straightened down river, she was nearly ahead of the Winnie, and was at first intending, as her master states, to come down between the Winnie and the Whiteash. This indicates considerable breadth of water between their courses. The Winnie, however, when some distance below the Whitney, gave her a signal

of two whistles twice, to the last of which the Whitney replied with two, slowed down, starboarded and went to the left, while the Winnie by starboarding her wheel also turned to her left, so as to head somewhat across the river and approach the line of the Whiteash's course. The owners of the Whiteash contend that the collision was brought about through the Winnie's turn towards the New York shore, and through the failure of the Winnie afterwards to break this sheer in time to avoid the Whitney.

The obligation to "keep out of the way," however, was not upon the Winnie, but upon the Whiteash, as the overtaking vessel. As the Winnie was meeting the Whitney, which was coming down in the opposite direction, and nearly straight ahead, the Winnie, in order to avoid the Whitney had the right upon assenting signals from her to turn to the left in order to seek a more favoring tide. At the time when those signals were exchanged with the Whitney, the Whiteash was considerably astern of the Winnie. There was plenty of water to the left for both of the tugs and tows; and the Winnie's turning to the left in order to pass the Whitney on that side, was no obstruction or embarrassment to the Whiteash. The whistles exchanged were timely and abundant notice to the Whiteash of the intention of the Winnie to go to the left. The latter could easily have conformed her movements to those of the Winnie, and she was, therefore, bound to do so. The collision occurred, primarily, at least, because the Whiteash wholly failed in this duty. Notwithstanding the signals, and the Winnie's change to the left, the Whiteash continued substantially upon the same course as before, apparently expecting the Winnie to haul under her stern, or to get straightened up river again in time. But owing to the heavy tow on the port side of the Winnie, she was slow in coming round again, though her wheel was hard-a-port.

The accident would probably not have happened had the master been in the pilot house; but he was at dinner, and the navigation was in charge of an unlicensed deckhand, who, if he understood the duty of an overtaking vessel to keep out of the way, took no timely steps to perform it. Killien v. Hyde, 63 Fed. 172; The Medea, Id. 1014.

I do not perceive any fault in the Winnie. She was heavily incumbered; she was proceeding very slowly, and after having passed sufficiently to port for the Whitney to go down on her starboard side, she put her wheel hard-a-port in order to straighten up the river, and kept it so till collision. The pilot of the Winnie claims that the collision would have been just barely avoided had the Whiteash, notwithstanding her failure to conform her movements to those of the Winnie, not starboarded her helm a few seconds before collision. The effect of this, he says, was to throw the starboard quarter of her float against the libelant's boat. I place no stress upon this circumstance, however, whether true or not. The duties and the faults of vessels are fixed before they arrive in such close proximity and under conditions in extremis. The Quaker City, 38 Fed. 153, 154.

Decree for the libelant against the Whiteash, and for the discharge of the Winnie.

DICKINSON v. UNION MORTGAGE, BANKING & TRUST CO., Limited, et al.

(Circuit Court, D. South Carolina. December 21, 1894.)

REMOVAL OF CAUSES—AMOUNT IN DISPUTE.

Plaintiff brought his action in a state court against defendant, alleging usury in a note and mortgage given by him to defendant, and asking for an injunction to restrain defendant from selling the mortgaged property under a power contained in the mortgage, and for judgment against defendant for $1,696.74. Defendant removed the case to the United States circuit court. *Held*, upon motion to remand, that the matter in dispute exceeded $2,000, besides interest and costs, the principal controversy being over the exercise of the power given to defendant by the mortgage, the value of which to defendant was measured by the sum to secure which it was given.

This was a suit by Frank H. Dickinson against the Union Mortgage, Banking & Trust Company, Limited, and others, to restrain a sale under a mortgage. The suit was brought in a court of the state of South Carolina, and was removed by the defendant the Union Mortgage, Banking & Trust Company to the United States circuit court. Plaintiff moves to remand to the state court.

J. J. Brown, for complainant.
Halcott P. Green, for defendants.

SIMONTON, Circuit Judge. This is a motion to remand a cause removed from the court of common pleas for Barnwell county, of this state. In order to determine the questions involved in it, we examine the whole record, including the petition for removal. The plaintiff, a citizen of the state of South Carolina, filed his summons and complaint against the defendant, a foreign corporation, alleging that on 7th May, 1889, he had borrowed from defendant the sum of $3,500, giving his promissory note therefor, payable five years after date, with interest at 8 per cent. per annum, and that he secured said note by a mortgage of certain realty situate in Barnwell county; that out of the sum for which he gave this note he only received $2,771.50, the rest having been reserved for commissions by the agent of the defendant and sundry small expenses; that for three years he has paid the annual interest on said note, contrary to the usury law of the state of South Carolina, and that under said law, as a consequence of such usurious payment, an action has accrued to him against the defendant for the amount usuriously charged and received by it, in the sum of $1,696.74; that, under a power contained in said mortgage, the defendant, by its agents and attorneys, John T. Sloan, Jr., Allen J. Green, and Halcott P. Green, have advertised the mortgaged land for sale at auction on the next sales day to satisfy said mortgage, and that a sale will take place of said land, and a cloud fixed on plaintiff's title, and great and irremediable injury inflicted on plaintiff by foreign parties against whom he will have no redress, unless the court will interfere by injunction restraining said sale until the rights of the parties can be adjudicated. The prayer is

for an injunction against the sale of the lands, and a judgment for the sum of $1,696.74 and costs. The defendant filed its petition for removal before the time for answering had expired, presented it and its bond to the state court, and obtained the proper order from that court. Messrs. Sloan and Green are the attorneys of the defendant. It is admitted that they are only nominal parties, and their presence in the cause does not affect the right of removal, although they are citizens of South Carolina. The motion to remand is based upon the ground that the matter in dispute does not exceed $2,000, besides interest and costs.

It is impossible to read the complaint without coming to the conclusion that its main purpose and object is to enjoin the sale of the land under the power of sale in the mortgage. All that precedes the statement of claim for the injunction only leads up to this ground for relief, and the right of defendant to enforce the power of sale in the mortgage is to this extent challenged and frustrated. "The proper criterion of the value of the matters involved in the controversy is to be found in the value of the property, the possession or enjoyment of which will be affected by the result of the litigation." Lehigh, etc., Co. v. New Jersey, etc., Co., 43 Fed. 547. The language of the court in Stinson v. Dousman, 20 How. 466, has application here:

"The defendant in error objected that the matter in dispute was not of the value of $1,000, and therefore this court had no jurisdiction of the cause. The objection might be well founded if this was regarded merely as an action at common law; but the equitable as well as the legal considerations involved in the cause are to be considered. The effect of the judgment is to adjust the legal and equitable claims of the parties to the suit."

It will be observed that, although the complaint states the loan of $3,500 and the execution of the note and the mortgage, it nowhere offers to pay any sum admitted to be due, but prays an injunction against the exercise by the defendant of its powers under the mortgage deed. It is plain, therefore, that the controversy between the plaintiff and the defendant is in great part over the exercise of this power, the value of which to the defendant is measured by the sum to secure which this power is given to it. The motion to remand is refused.

In re CITY OF CHICAGO.

(Circuit Court, N. D. Illinois. May 17, 1894.)

1. REMOVAL OF CAUSES—SUITS—ASSESSMENT PROCEEDINGS.
Assessment proceedings for municipal improvement, being an exercise of the taxing power and an administrative act, do not constitute a "suit," within the provisions for removal of suits to federal courts, though they are conducted under judicial forms by a court of general judicial powers.

2. SAME—SEPARABLE CONTROVERSY.
There is not a separable controversy, as required by the removal statute, in an assessment proceeding for municipal improvements, where the court which conducts it determines the district on which the assessment shall be laid, and therefore who shall be parties, and in a single judgment each piece of property is assessed for an amount bearing the same proportion to the full amount to be collected that its benefits bear to the full amount of benefits.

Special assessment proceedings by the city of Chicago, removed to the federal court. The city moves to remand.

The city of Chicago moves to remand to the county court of Cook county a special assessment proceeding for putting a sewer in Montrose Boulevard, which case was removed to this court on petition of the Fidelity Insurance, Trust & Safe-Deposit Company, as a nonresident lot owner, claiming separable controversy. Proceedings were instituted by the city for making this improvement, pursuant to article 9 of the act of the Revised Statutes of Illinois relating to cities and villages. This act provides that the council shall order a petition filed in the county court to assess the cost, after an improvement has been ordered, and estimates of the cost have been made and approved. Thereupon the county court appoints three commissioners, who are to ascertain and report (1) the amount of benefits to the city, and (2) an assessment of the balance of cost against such parcels of land as they shall find benefited in the proportion in which they will be severally benefited. They are to give to owners affected notice by mail and publication, and any person interested may file objections. All owners who do not object are defaulted, and assessments confirmed against the lots. When the report comes up for hearing, evidence may be introduced by objectors and by the city, and the hearing must be "conducted as in other cases at law"; and a jury determines whether the premises of objectors are assessed more or less than their proportionate share of the cost, and what amount they should be assessed. The court may at any time before final judgment modify, alter, change, annul, or confirm any assessment returned, or cause any such assessment to be recast by the same commissioners, or may appoint other commissioners for the purpose, and may take any proceedings which may be necessary to make a true and just assessment. One judgment is entered for all assessments (People v. Gary, 105 Ill. 332); but it has the effect of a several judgment as to each parcel assessed; and in case of appeal or writ of error by an objector, the judgment is not invalidated, and is not delayed, except as to his assessment. The judgment is certified to the collector of taxes, and constitutes his warrant. Subsequently, application is made to the county court, in the case of delinquents, for judgment of sale against lands unpaid. The petition for removal to this court was presented when the matter was before the county court on the commissioners' report, assessing benefits against a great number of parcels, with numerous owners (including this objector's land), and covering such area as the commissioners deemed subject to benefits, and not being confined to abutting property. The order thereupon names only the objector and his parcel of land, evidently intending to retain in the county court the other assessments.

Lockwood Honore, for city of Chicago.
Isham, Lincoln & Beale, for objector.